

# Cherrygarden Lane link: document analysis

## Application to record a restricted byway from Sandwich Road (opposite Cherrygarden Lane) to Grannies Lane

### I. Introduction

#### A. Quick reference

- A.1. Parish of: Nonington
- A.2. Former parish of: Nonington
- A.3. Termination points: Gooseberry Hall Corner (on the Sandwich Road opposite Cherrygarden Lane), and Grannies Lane (the road from the Sandwich Road to Cold Blow Corner)
- A.4. Ordnance Survey termination points: TR26995283 to TR27055279
- A.5. Postcode: CT15 4HJ
- A.6. Ordnance Survey Explorer sheet: 150
- A.7. Ordnance Survey County Series 25" sheets: Kent LXVII/16, LVII/4
- A.8. Location plan (see application map at section II below for scale representation):



follows a track through woodland southeast for a distance of 65m to join Grannies Lane (the road from Sandwich Road to Cold Blow Corner) at a point where the road changes direction from east to southeast, at B (TR27055279).

D.3. The points A and B are identified in the application map at part II below.

## E. Nomenclature

E.1. The following names are used in this analysis:

- Gooseberry Hall Corner — the junction of Sandwich Road, Cherrygarden Lane and the application way, approximately 300m east-southeast of Gooseberryhall Farm
- Sandwich Road — the road from Woolage Village through Nonington and Woodnesborough to Sandwich
- Cherrygarden Lane — the byway open to all traffic (EE280) from Goodnestone Park to Gooseberry Hall Corner
- Grannies Lane — the present alignment of the road from Sandwich Road (75m southwest of Gooseberry Hall Corner) to Cold Blow Corner (recorded with this name in the National Street Gazetteer<sup>1</sup>)
- Cold Blow Corner — the junction of Grannies Lane, the Kelk Hill road to Elvington, the road to Knowlton or Cuckolds Corner and footpath EE323 to Barville Road<sup>2</sup> (name appears on the Poor Law Commissioners' survey map at item IV.H below)

## F. Background

F.1. The application way appears historically to be part of a highway of some vintage (being at least 400 years old: see the St Alban's map (Gordon Ward collection), item IV.A below) between Adisham or Wingham, via Cherrygarden Lane, footpath EE323 descending Kelk Hill, Barville Road, Sutton, Ringwould, Kingsdown and Walmer. Early Ordnance Survey maps record this way as the 'Supposed Pilgrims Way'<sup>3</sup>, although this appellation does not appear on later editions, while the way was referred to in a 1511 quitclaim<sup>4</sup> as 'Saint Margaret Strete' — this way can be followed across country to St. Margaret's at Cliffe.

F.2. Older maps show that the application way has long formed a crossroads at Gooseberry Hall Corner, with traffic using Cherrygarden Lane and the application way crossing with traffic using Sandwich Road. These older maps do not show the present spur, part of Grannies Lane, on the south side of the crossroads connecting the Sandwich road with the road to Cold Blow Corner, and accordingly, there can be little doubt that the application way was part of the ordinary road network. At a later date, probably in the eighteenth century, the importance of Cherrygarden Lane declined, and most traffic using Grannies Lane to Cold Blow Corner originated from or via Nonington — at this time, the spur appears to have come into use, although its precise form and date of origin remains uncertain.

1 [portal.roadworks.org/data/dsp\\_usrnDetail.cfm?r=\(49559,1\)&lyrType=st](http://portal.roadworks.org/data/dsp_usrnDetail.cfm?r=(49559,1)&lyrType=st)

2 For which application has been made to upgrade to restricted byway, commensurate with its status as an old public carriage road.

3 The 'Supposed Pilgrims Way' is also marked across Goodnestone Park along the same line, presumably a road which was stopped up sufficiently long ago that no records remain.

4 Online at: [https://books.google.co.uk/books?id=IK-JQwAACAAJ&dq=Nonynngton&hl=en&sa=X&ei=jcr0Tr6xIYf28gO-g4jNAQ&redir\\_esc=y](https://books.google.co.uk/books?id=IK-JQwAACAAJ&dq=Nonynngton&hl=en&sa=X&ei=jcr0Tr6xIYf28gO-g4jNAQ&redir_esc=y).

F.3. It is sometimes said that the indication of a road on historic maps is not evidence that the road was of public status<sup>5</sup>. However, there is no doubt that the roads which converge on Gooseberry Hall Corner are all public roads, and have been since time immemorial. The question which is raised by this application is whether the short section of application way was part of that local network of public roads — and if it was, it must also be of public status.

## G. Grounds for application

G.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*<sup>6</sup>, Lewison LJ said, at paragraph 22,

'In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

G.2. The Planning Inspectorate *Consistency Guidelines* recognise that several pieces of evidence which are individually lightweight in themselves (such as an historic map or a tithe map) may, collectively, convey a greater impact:

'If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.'<sup>7</sup>

G.3. The correct test under s.53(3)(c)(i) is whether:

'the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path...'

5 "If it is accepted that a road depicted on an old map did in fact exist on the ground on the line shown on the map, its depiction is no indication as to whether there was any form of public right of way over it." *Rights of Way: a guide to Law and Practice*, Riddall and Trevelyan, fourth edition, citing *Merstham Manor Ltd v Coulsdon and Purley Urban District Council* (1936). However, in that case, the judge said: "There is nothing in the maps to show whether or not the topographer-author was intending to represent the roads on his map as public highways." The position may be different where the map uses an index to identify certain ways as public ways (such as 'turnpike' or 'cross road'), or where it can be shown that the map maker adopted a practice of distinguishing public and private roads, or of showing only public roads.

6 [2012] EWCA Civ 334

7 [Consistency Guidelines](#): para.2.17.

The surveying authority must therefore make an order consequent on this application where the evidence (of the application, taken with any other evidence) shows that there is a reasonable allegation of the existence of the application way.

G.4. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see below), there were full vehicular rights.

## H. Natural Environment and Rural Communities Act 2006

H.1. The application seeks to show that the application way is a public carriageway. None of the application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in section 67 apply. The application is therefore made for a restricted byway.

### I. Points awarded

I.1. Points have been awarded to each piece of evidence in relation to the application way, calculated according to the guidance in *Rights of Way: Restoring the Record*<sup>8</sup>.

#### I.2. Points:

Item	Ref	Points A–C
St Alban's map (Gordon Ward collection)	IV.A	2
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.B	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.C	1
Ordnance Survey, one-inch Old Series map of Kent	IV.D	0
Paterson's Roads — Thanet and Kent and Sussex Coast	IV.E	1
Greenwood's map of Kent	IV.F	1
Tithe Act 1836	IV.G	0
Poor Law Commissioners' survey	IV.H	5
Public footpath diversion orders, St Alban's Court	IV.I	3
Ordnance Survey County Series first edition twenty-five inch maps	IV.J	0
Finance (1909–1910) Act 1910	IV.K	5
<b>Total points</b>		<b>19</b>

<sup>8</sup> Sarah Bucks and Phil Wadey, 2<sup>nd</sup> ed. 2017.

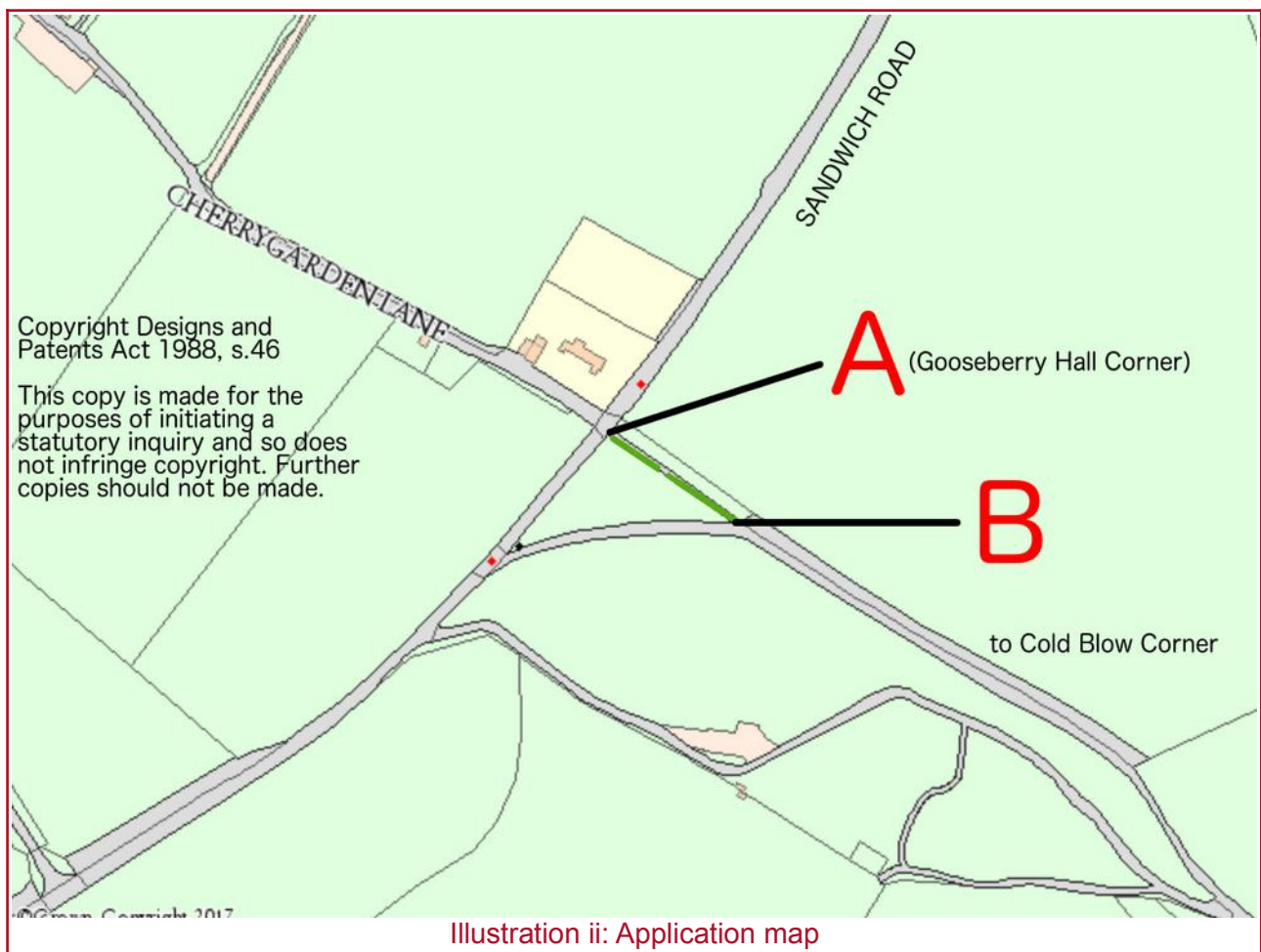
## J. Width of application way

J.1. There is no available evidence of the width of the application way among the historic evidence. The application way is not recorded as a separate parcel on Ordnance Survey large scale maps.

J.2. The width of the application way can be measured from Ordnance Survey large scale maps, but the width of the way shown on the map may be notional.


J.3. As a carriageway, the application way historically is likely to have been of sufficient width to accommodate two vehicles passing. A width of four metres would generally be sufficient for this purpose, and is therefore sought.

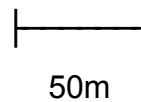
## II. Application map



Map centred on A at TR270528

Scale: approx. 1:3,200 (when printed A4)

Application way is marked 



### III. Along the way



Illustration iii: From Gooseberry Hall Corner (A), looking east



Illustration iv: From Gooseberry Hall Corner (A), looking east



Illustration v: Near Gooseberry Hall Corner (A), looking west to Cherrygarden Lane



Illustration vi: Between A and B, looking west



Illustration vii: Between A and B, looking east



Illustration viii: At B, looking east



## IV. Evidence

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### A. St Alban's map (Gordon Ward collection)

A.1. **Date:** 1629

A.2. **Source:** Kent County Archives (Gordon Ward collection)<sup>9</sup>

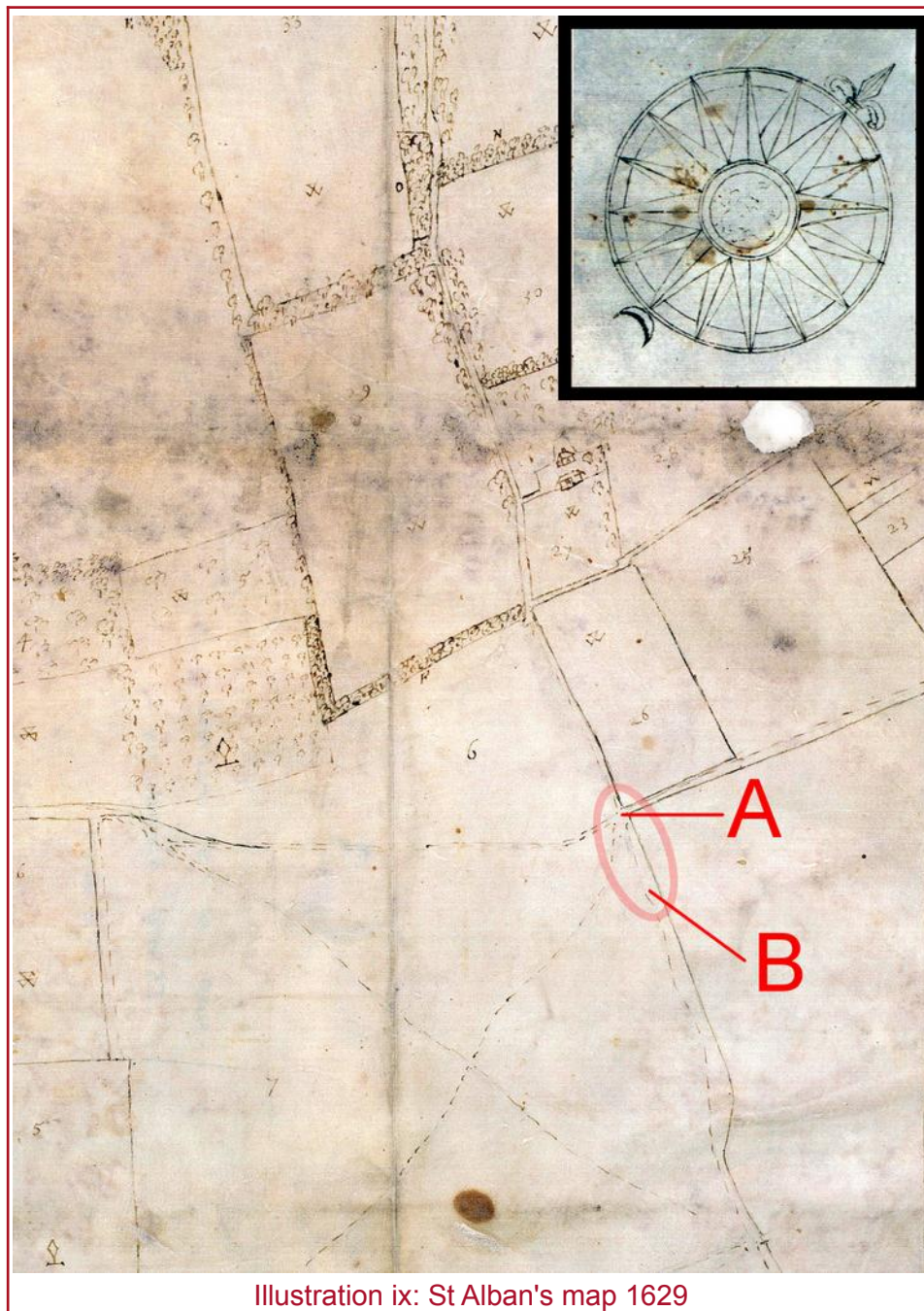


Illustration ix: St Alban's map 1629

A.3. **Description:** scale: none marked (so far as is visible); orientation: a compass is marked on the map (top is northwest).

A.4. The map is one of many documents in a large and miscellaneous collection accumulated by Dr Gordon Ward of Sevenoaks during many years of antiquarian study.

A.5. The map is given in the catalogue as dating from around 1650, but it has elsewhere been dated to 1629<sup>10</sup>.

A.6. The map shows the intersection between Cherrygarden Lane and the Sandwich Road, placed on the northeast side of St Alban's Downs (parcels labelled 6 to 8 on the map). Cherrygarden Lane is shown continuing southeast of the intersection, open to the

<sup>10</sup> In *History of Old St Alban's Court, Nonington*, [Archaeologia Cantiana](#), vol.125, pp.273–290 at footnote 19, reference is made to a thesis which suggests a date of 1629.

down on its southwest side, but enclosed on the northeast side. No spur is shown on the southwest side of the intersection (although a track connects the two roads approximately along the line of footpath EE309 today).

A.7. **Conclusion:** The map of the St Alban's estate shows that, at the date of the map, the intersection between the Sandwich Road and Cherrygarden Lane formed a cross-roads at A, and that the way continued southeast from A towards B. There was no spur connecting these routes at this time (or at least, none was marked on the map).

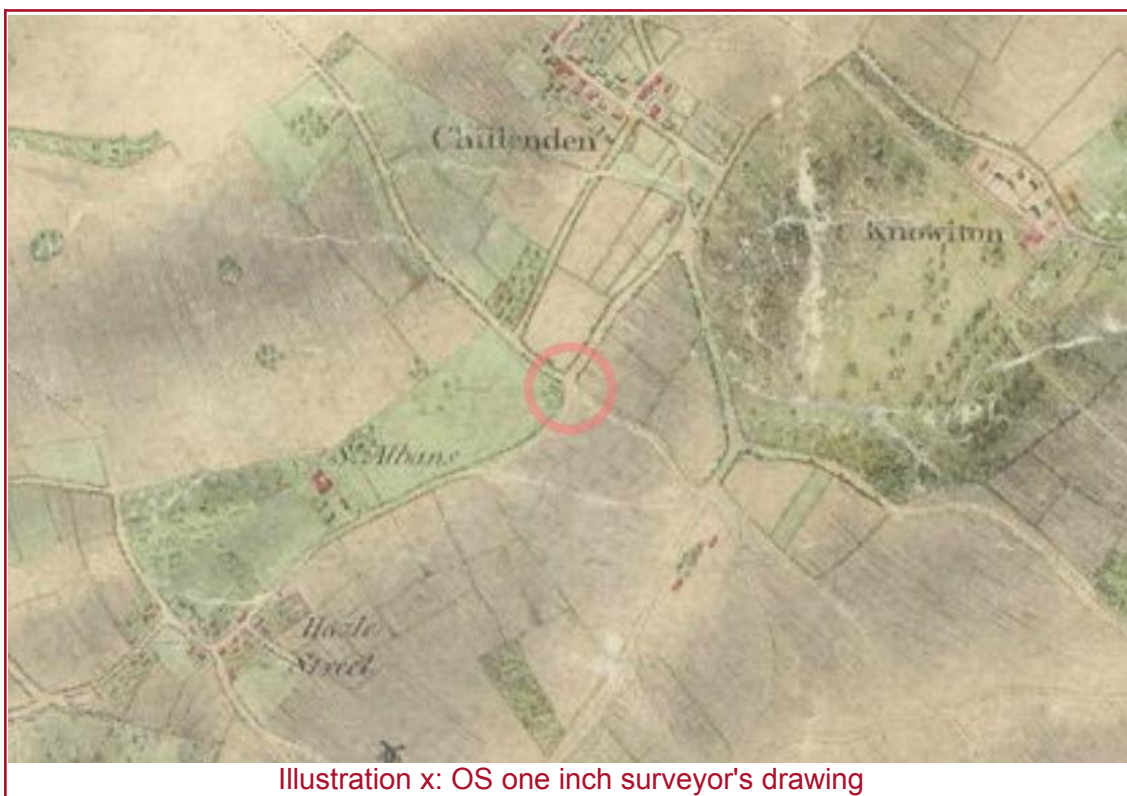
A.8. As these roads are all recognised as public roads today, it follows that the application way was, formerly, the main, and probably only, means of proceeding southeast from Cherrygarden Lane into the road to Cold Blow Corner. It must therefore be a public road, and remain so today.

A.9. **Points:** 2

## B. Ordnance Survey surveyor's drawing, Canterbury (East)

B.1. **Date:** 1797

B.2. **Source:** British Library website<sup>11</sup>



B.3. **Description:** Original scale: believed to be 1:31,680 (two inches to one mile); orientation: unchanged (north). Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its

<sup>11</sup> [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html)

headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.<sup>12</sup>

B.4. The map clearly marks Cherrygarden Lane, Sandwich Road and the Cold Blow Corner road, so that the four limbs of these roads form a slightly distorted crossroads at Gooseberry Hall Corner (A).

B.5. **Conclusion:** The Ordnance Survey drawing provide good evidence of the existence of the application way at the end of the eighteenth century. The drawing shows a direct continuation of Cherrygarden Lane towards Cold Blow Corner.

B.6. **Points:** 1

(This is the first of two Ordnance Survey maps to score points: no more than two such maps are scored.)

## C. Ordnance Survey, Mudge-Faden one-inch map of Kent

C.1. **Date:** 1801

C.2. **Source:** Kent County Archives<sup>13</sup>



Illustration xi: Mudge-Faden one inch map 1801

12 From the Curator's introduction to the Ordnance Survey drawings, British Library: [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html).

13 Available online at: [mapco.net/kent1801/kent51\\_03.htm](http://mapco.net/kent1801/kent51_03.htm).

C.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north). This map of Kent was the first Ordnance Survey map to be published. The survey of Kent was commenced in the 1790s by the Board of Ordnance, in preparation for the feared invasion of England by the French. However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

C.4. The map clearly marks Cherrygarden Lane, Sandwich Road and the Cold Blow Corner road, so that the four limbs of these roads form a crossroads at Gooseberry Hall Corner (A).

C.5. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements. The Mudge-Faden map is good evidence of the existence of the application way at the end of the eighteenth century. The map shows a direct continuation of Cherrygarden Lane towards Cold Blow Corner.

C.6. **Points:** 1

(This is the second of two Ordnance Survey maps to score points: no more than two such maps are scored.)

## D. Ordnance Survey, one-inch Old Series map of Kent

D.1. **Date:** 1831 (but survey dating from late eighteenth century)

D.2. **Source:** National Library of Australia<sup>14</sup>

<sup>14</sup> <http://nla.gov.au/nla.obj-231917365>



Illustration xii: OS 1st ed 1" map

D.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north). This is the Old Series one inch map first published officially by the Ordnance Survey. The map reproduced here is state 4, from circa 1831, but believed to be unchanged from state 1. Although published some years later than the Mudge-Faden map, the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

D.4. The Ordnance Survey Old Series map clearly marks Cherrygarden Lane, Sandwich Road and the Cold Blow Corner road, so that the four limbs of these roads form a cross-roads at Gooseberry Hall Corner (A).

D.5. **Conclusion:** The Ordnance Survey Old Series map is good evidence of the existence of the application way as a well-defined road or bridleway in the early nineteenth century. The map shows a direct continuation of Cherrygarden Lane towards Cold Blow Corner.

D.6. While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest. It can therefore be concluded with some confidence that the application way was a defined feature in the landscape, capable at least of accommodating ridden horses, and probably a carriageway.

D.7. **Points:** 0

(No more than two points are scored for Ordnance Survey maps.)

## E. Paterson's Roads — Thanet and Kent and Sussex Coast

E.1. **Date:** 1811

E.2. **Source:** British Library<sup>15</sup>



E.3. **Description:** Original scale: not known, but scale marked in miles (however, the map has been graphically stretched to diminish the effect of the bookbinding); orientation: unchanged (north). This map by J Thomson is one of several maps of Thanet and the Kent and Sussex coast annexed to the thirteenth edition of *Paterson's Roads*, a directory of main roads. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C above): however, the map has been revised to show the Dover to Sandwich turnpike (*i.e.* via Hacklinge, not shown in the extract above), which was authorised in 1797.

E.4. The Thomson map marks Cherrygarden Lane, Sandwich Road and the Cold Blow Corner road, so that the four limbs of these roads form a crossroads at Gooseberry Hall Corner (A). Although the crossroads appears close to the binding, the crossroads may be seen with greater clarity on the Pastpages.co.uk website referred to in footnote 15 below.

E.5. **Conclusion:** Revision of the map, which appears to be derived from the Mudge-Faden map, so as to include the Dover to Sandwich turnpike, suggests that the representation of at least principal roads was researched and updated. The Thomson map appears to focus on key roads available to the public, and (although probably based on the Mudge-Faden map), to have been revised, and the Thomson map is therefore good evidence for the existence of a defined way, at least of bridleway status, along the application way.

E.6. **Points:** 1

## F. Greenwood's map of Kent

F.1. **Date:** 1819–20

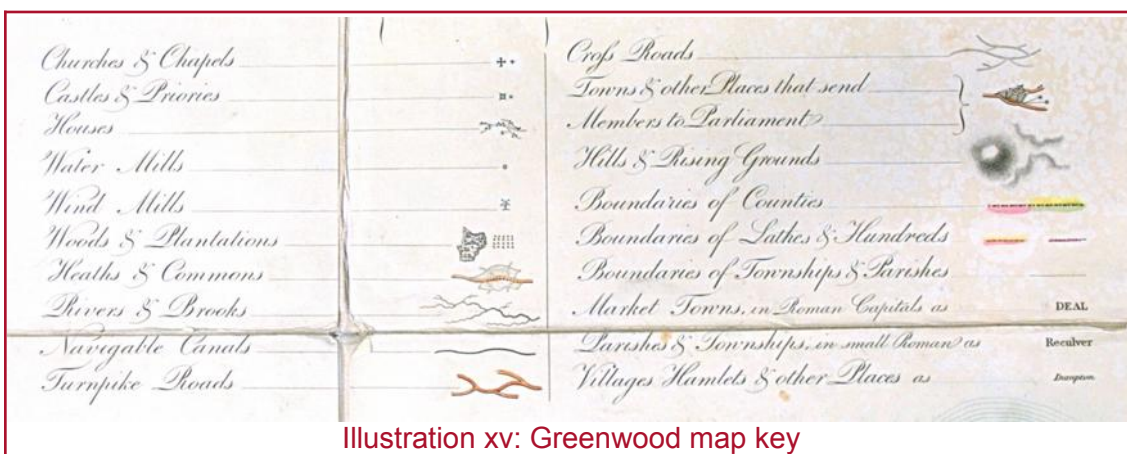
15 10348.d.15: copy available at [www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg](http://www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg) .

F.2. **Source:** Kent County Archives

Greenwood map



Greenwood map key



F.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north). This copy appears to be state iii, published between 1821 and 1827.

F.4. Greenwood's map marks Cherrygarden Lane, Sandwich Road and the Cold Blow Corner road, so that the four limbs of these roads form a crossroads at Gooseberry Hall



Corner (A). However, the map is the first published source to depict a road cutting off the corner between the Sandwich Road and the Cold Blow Corner road.

F.5. **Conclusion:** Greenwood's map is good evidence for the existence of the application way in the early years of the nineteenth century. The map shows a direct continuation of Cherrygarden Lane towards Cold Blow Corner, as well as, for the first time, another way cutting off the corner between the Sandwich Road and the Cold Blow Corner road, likely to be an early recognition of the tarred course of the latter road today. The key describes the route as a 'cross road', which is suggestive of a public carriageway.

F.6. **Points:** 1

## G. Tithe Act 1836

G.1. **Date:** 1841

G.2. **Source:** map — Kent County Archives<sup>16</sup>; tithe award — Kent Archaeological Society<sup>17</sup>

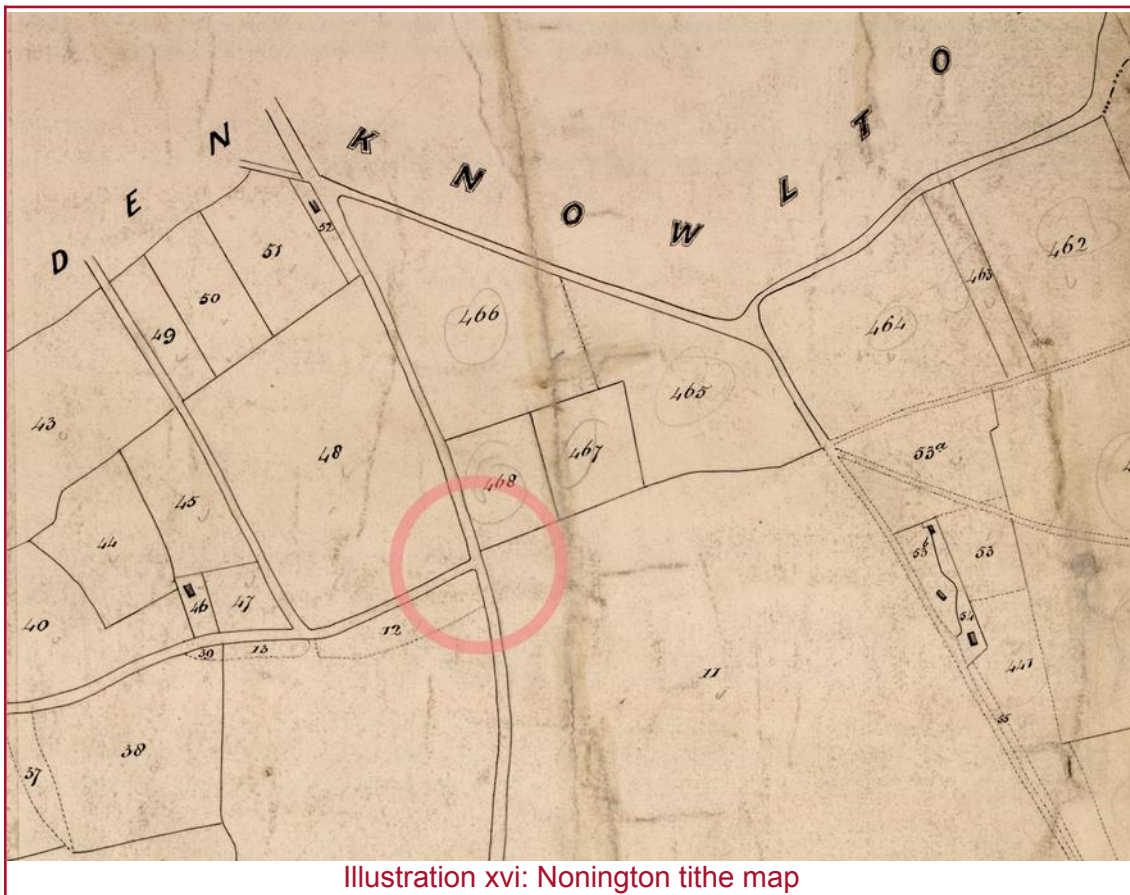


Illustration xvi: Nonington tithe map

G.3. **Description:** Original scale: scale marked on map in chains; orientation: unchanged (north is 45° west of top). The tithe map for Nonington does not show the application way, nor the continuation of the way towards Cold Blow Corner road. Neighbouring roads are shown, including the Sandwich Road and Cherrygarden Lane (which form a T-junction at

16 Kent tithe maps are available as images on CD.

17 [www.kentarchaeology.org.uk/Research/Maps/NON/01.htm](http://www.kentarchaeology.org.uk/Research/Maps/NON/01.htm).

Gooseberry Hall Corner (A)), and all other roads forming an intersection at Cold Blow Corner.

G.4. **Conclusion:** The omission of the application way, and of the Cold Blow Corner road in its entirety, is surprising. The land is allocated to parcel 11, which in the tithe apportionment is recorded as St Albans Downs. Earlier maps show that the road between A and Cold Blow Corner was unenclosed on the south side, and it is possible that it was open to, and grazed as, part of the parcel, and therefore considered to be titheable. However, other roads in the vicinity which are entirely unenclosed are not so distinguished, and the omission cannot easily be explained.

G.5. **Points:** 0

## H. Poor Law Commissioners' survey

H.1. **Date:** 1859

H.2. **Source:** Canterbury Cathedral Archives<sup>18</sup>

18 CCA-U3/118/19/1. A copy (in poor condition) is held by Kent County Archives: RD/Ea/P15.

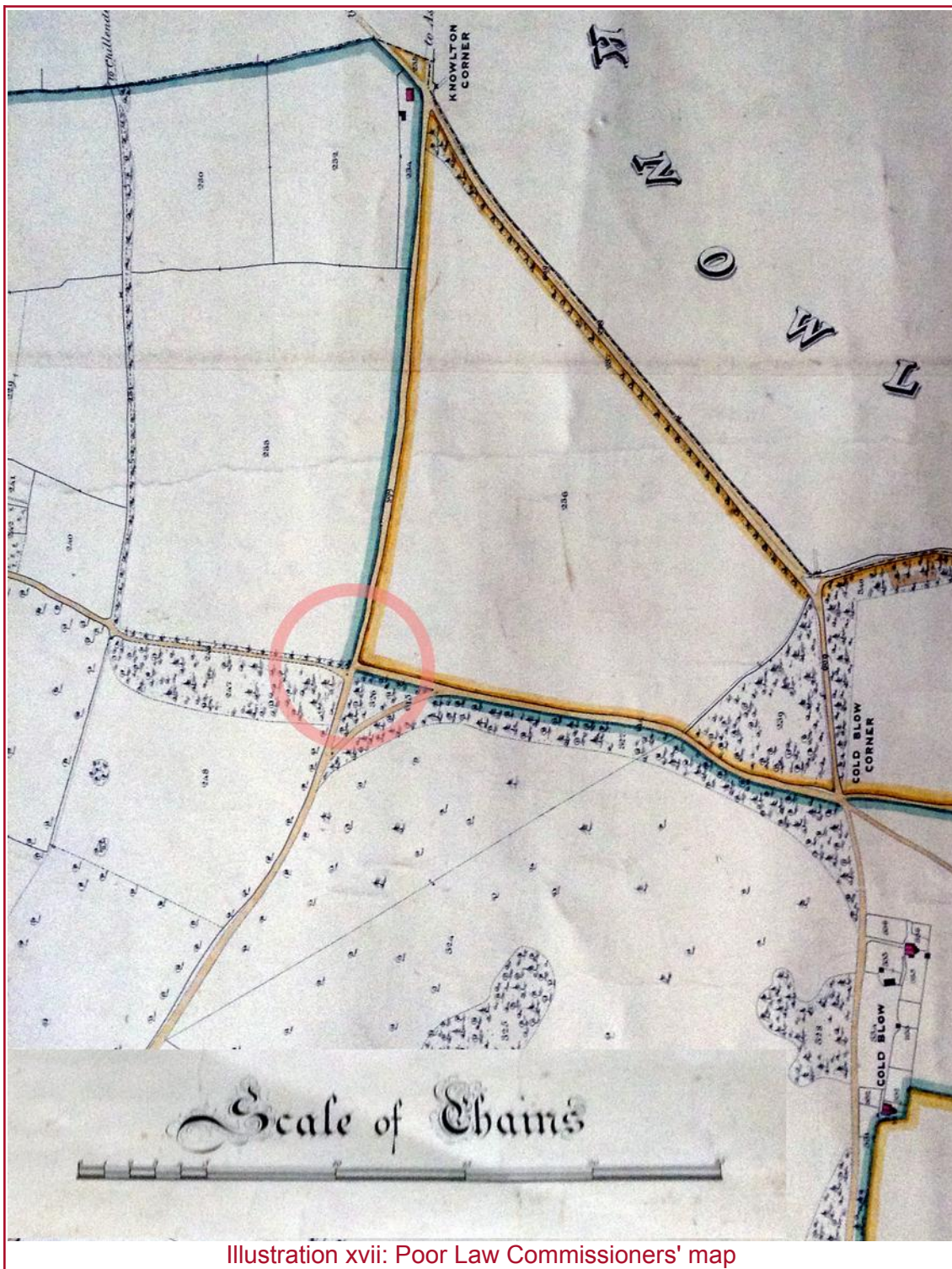


Illustration xvii: Poor Law Commissioners' map

H.3. **Description:** Original scale: scale marked on map in chains (but scale may vary owing to differences between component photographs); orientation: rotated 270°.

H.4. The Poor Law Commissioners ordered a detailed survey and map of the ownership and occupation of land in the parish of Nonington, presumably for the purposes of validating the rateable value of land assessed by the Poor Law Guardians of the parish under section 3 of the Parochial Assessment Act 1836<sup>19</sup>. The map seems to have been based

19 S.3: "And be it enacted, that when it shall be made to appear to the Poor Law Commissioners by representation in writing from the board of guardians of any union or parish under their common seal, or from

on the Tithe Act 1836 map (see item IV.G above) but with substantial modification to reflect change during the subsequent two decades. The ownership and occupation of land was identified in an apportionment.

H.5. Unfortunately, the apportionment is now missing, despite enquiries made of both the archives which hold a copy of the map (see footnote 18 above). Recourse has therefore been made to manuscript notes made of the apportionment by a local history researcher<sup>20</sup> in connection with a view of the map and apportionment around the year 2000.

H.6. The Cold Blow Corner road is labelled as parcel 614, as is the entire road continuing southeast from Cold Blow Corner to Round Tree<sup>21</sup>. The spur from the Cold Blow Corner road to the Sandwich Road is separately labelled 615. In the apportionment (as recorded by the researcher), parcels 614 and 615 appear under the heading 'Roads — upkeep by Nonington Highway Surveyors'. Parcel 614 is described as 'Road from Gooseberry Hall Corner to New Purchase Firs' Parcel 615 is described as 'Junction near Gooseberry Hall Corner'.

H.7. **Conclusion:** The Poor Law Commissioners' survey is good evidence of the status of the application way at the date it was undertaken. The citation of the application way as one of a number of roads in the parish whose 'upkeep' was the responsibility of the parish surveyors demonstrates that the way was regarded as a public road: as such, the land occupied by these public roads would not have been rateable under the Poor Law Act 1601<sup>22</sup>. Poor law rateable valuations attracted notoriety within the parish<sup>23</sup>, so that the exclusion of private roads (with their value for grazing) would have been open to criticism. The survey appears only to have records carriageways as roads: a number of ways in the parish now recorded as bridleways are annotated as such, but not recorded as roads.

H.8. **Points:** 5

## I. Public footpath diversion orders, St Alban's Court

I.1. **Date:** 1863, 1873

I.2. **Source:** Kent County Archives<sup>24</sup>

the majority of the church-wardens and overseers or other officers competent as aforesaid to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes cannot be made without a new valuation, it shall be lawful for the Poor Law Commissioners, where they shall see fit, to order a survey, with or without a map or plan, on such scale as they shall think fit, to be made and taken of the messuages, lands, and other hereditaments liable to poor rates in such parish, or in all or any one or more parishes of such a union, and a valuation to be made of the said messuages, lands, and other hereditaments according to their annual value, ... ." S.4 confers a power of entry for the purposes of survey. S.6 enables appeals to quarter sessions against the valuation. Extracted from [Lumley's Union assessment acts](#), 1895.

<sup>20</sup> The identity of the researcher is available on request.

<sup>21</sup> This road is currently footpath EE323, but an application has been made to upgrade the footpath to restricted byway.

<sup>22</sup> S.1 provides for, "Taxation of every Inhabitant, Parson, Vicar and other, and of every Occupier of Lands, Houses, Tithes impropriate, Propriations of Tithes, Coal-Mines, or saleable Underwoods in the said Parish". Extracted from [The Workhouse: the story of an institution](#).

<sup>23</sup> Ss.1 and 2 of the Poor Rate Act 1743 required the publication of poor rates in church, and for the rates to be inspected by any inhabitant and for copies to be taken. Extracted from *Lumley's* (see footnote 19 above).

<sup>24</sup> Q/RH/2/407 (1863), 474 and 475 (both 1873)

Footpath diversion 1 (St Albans Court path) 1863

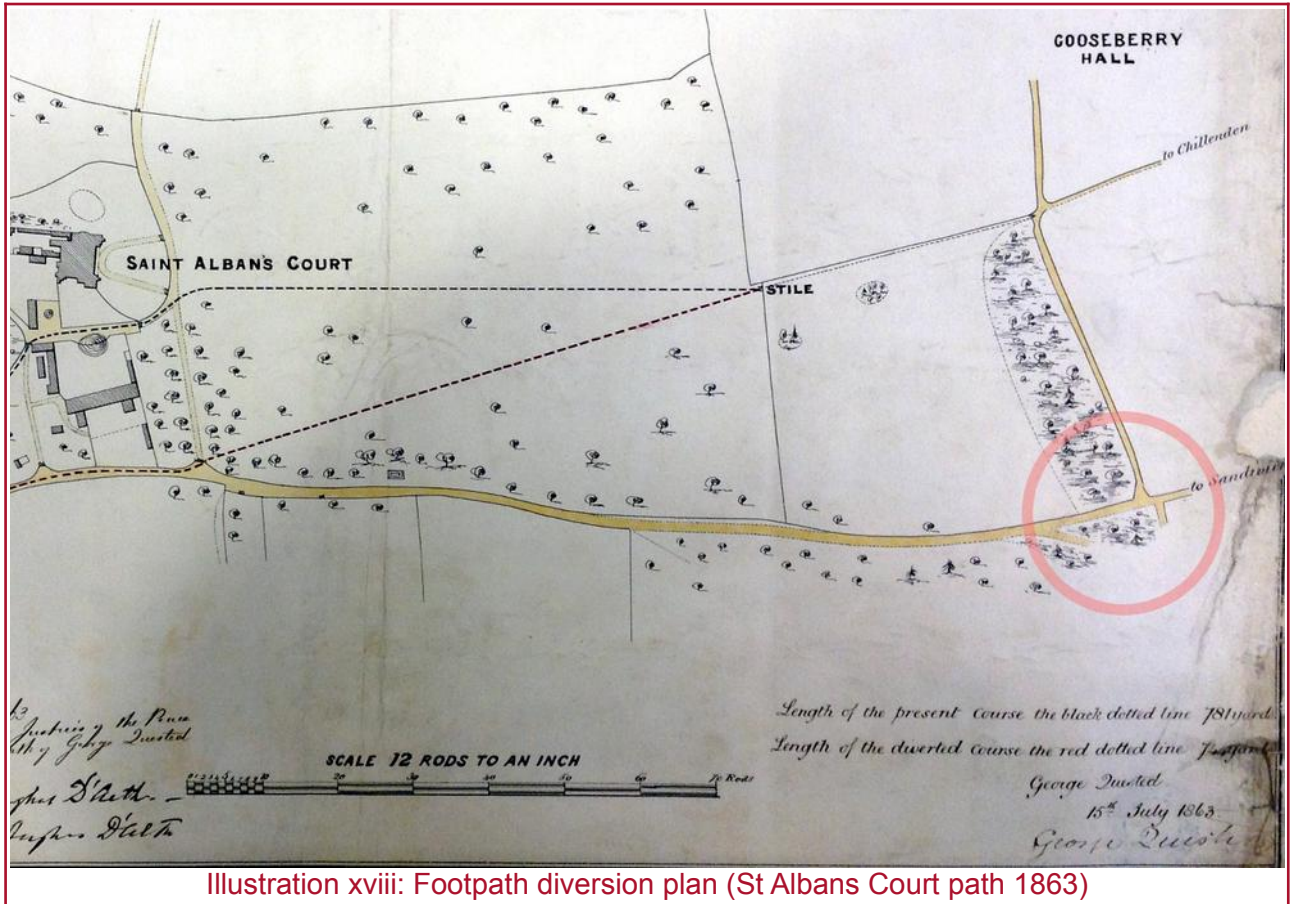


Illustration xviii: Footpath diversion plan (St Albans Court path 1863)

Footpath diversion 2 (to Bonnington Stile) 1873

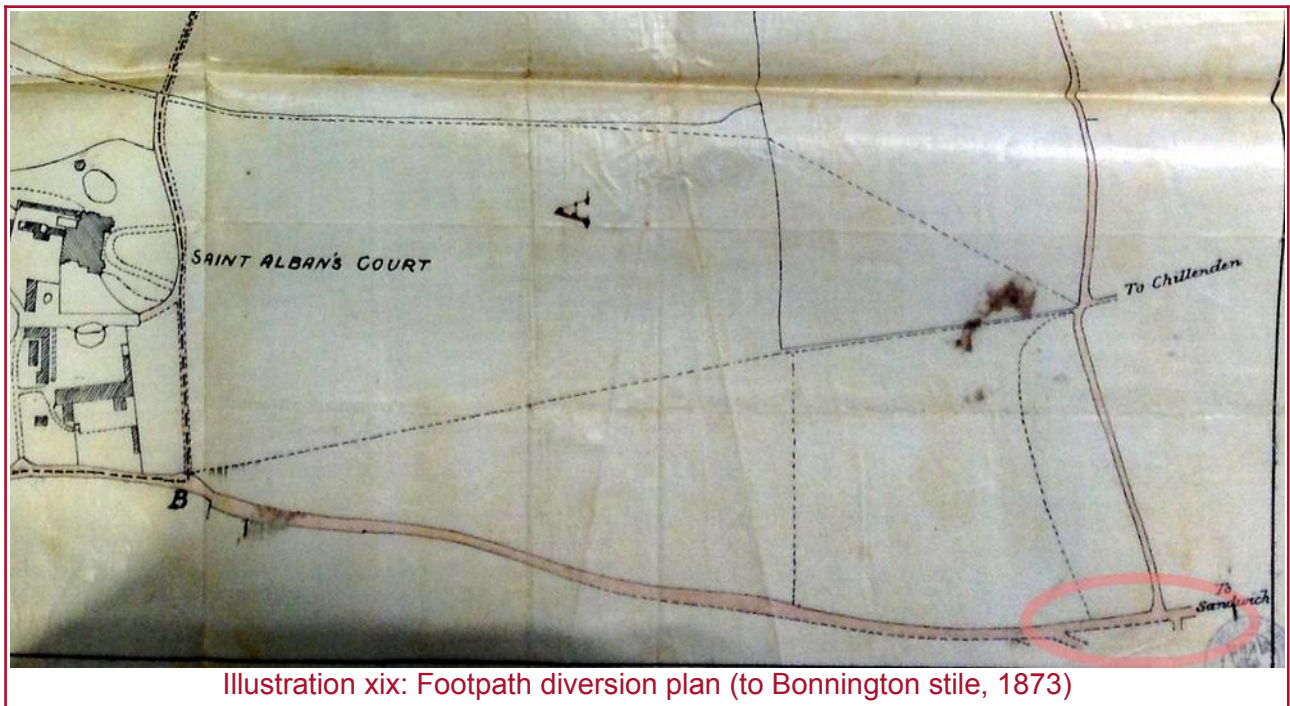


Illustration xix: Footpath diversion plan (to Bonnington stile, 1873)

### Footpath diversion 3 (from bottom of Beauchamp Lane) 1873

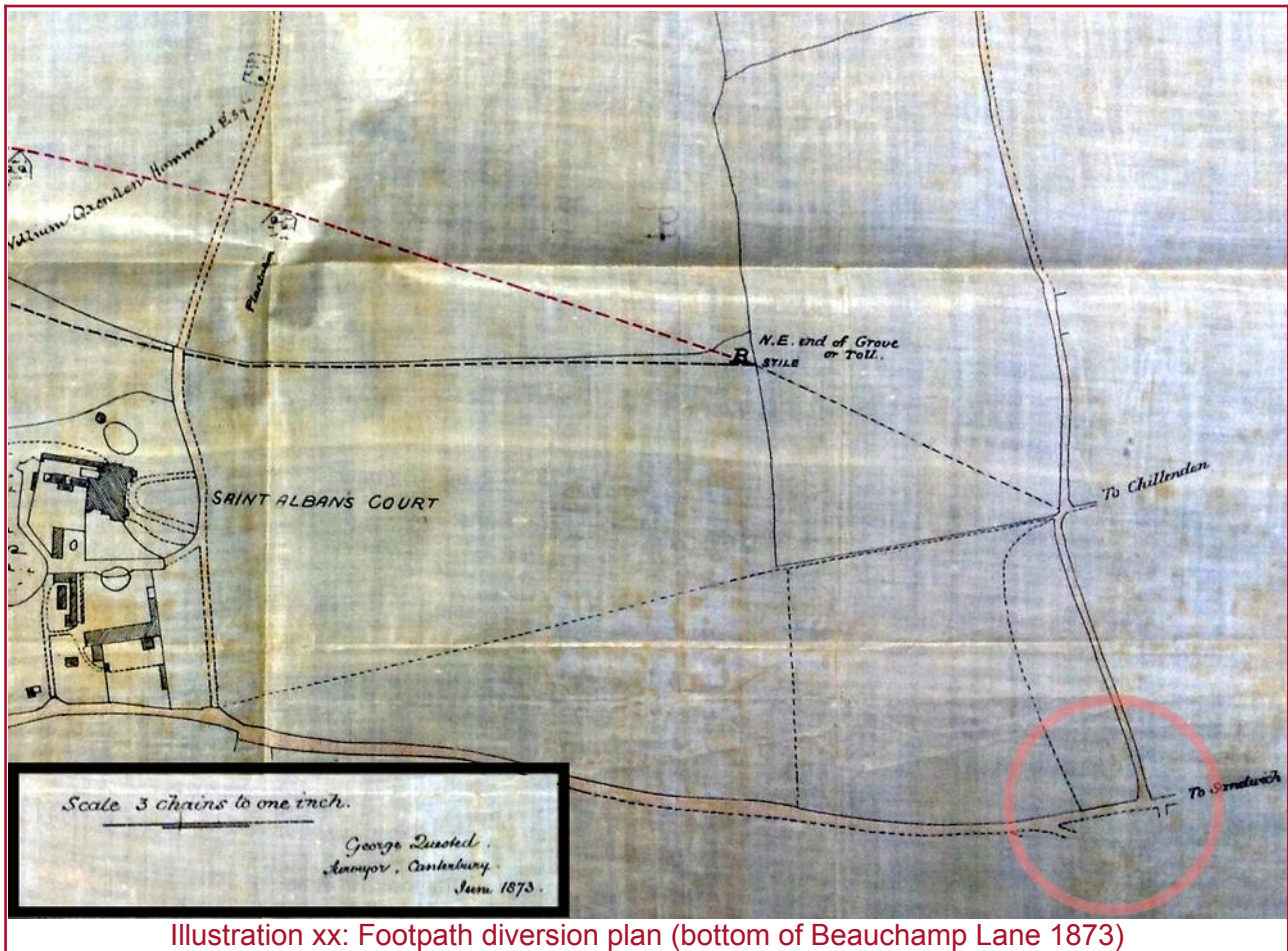


Illustration xx: Footpath diversion plan (bottom of Beauchamp Lane 1873)

1.3. **Description:** Three footpaths across the St Alban's Court estate were diverted by order of the magistrates, the first in 1863, and the other two in 1873. The plans which accompanied the orders, and which depict the routes of the paths to be diverted, include Gooseberry Hall Corner. They show Cherrygarden Lane and Sandwich Road, and the application way for a short distance from A south towards B. In addition, the plans include the spur between the Cold Blow Corner road at B, and the Sandwich Road towards Nonington.

1.4. On the 1863 map (illustration xviii), ways now recognised as public roads or bridleways are shown shaded ochre, including the application way. Certain drives within St Alban's Court are shaded in a paler rendering, possibly to represent metalled surfaces, although it should be noted that the road running from Sandwich Road north to Bonnington stile (beyond north margin) was, at this date, a public footpath, to be diverted only in 1873. On the 1873 maps (illustrations xix and xx), the distinction between public roads and internal drives is less certain, but it is suggested that all those ways coloured pink on both the 1873 maps are intended to represent public highways (noting that the aforementioned road running from Sandwich Road north to Bonnington stile was only to be stopped up and diverted by virtue of the 1873 orders).

1.5. **Conclusion:** The plans embodied in the diversion orders show the application way as part of the ordinary road network during the second half of the nineteenth century. The

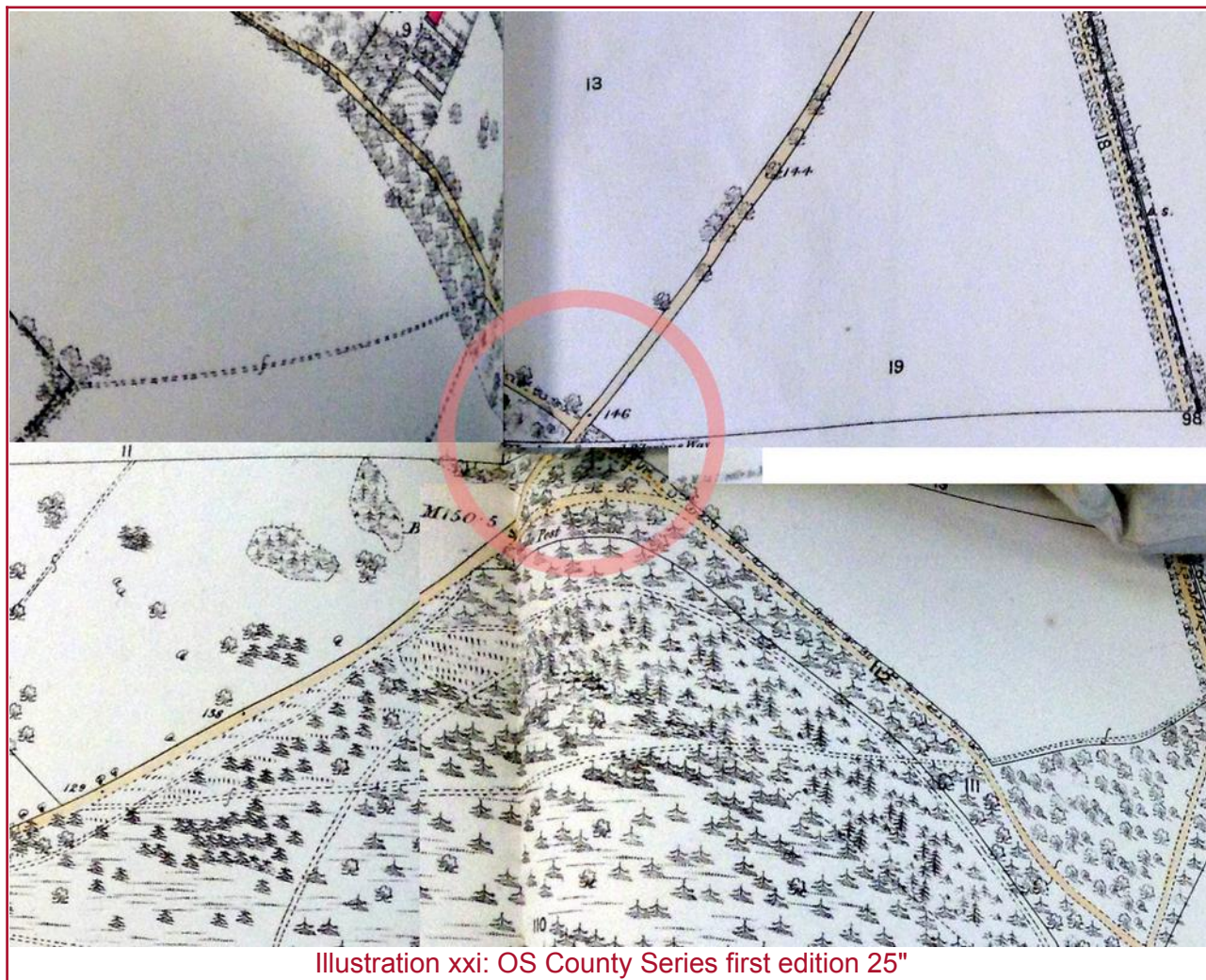
colouring of the application way is consistent with the local road network, and suggestive that the application way is also a public road.

I.6. **Points:** 3

## J. Ordnance Survey County Series first edition twenty-five inch maps

J.1. **Date:** 1872

J.2. **Source:** Kent County Series sheets LXVII/16, LVII/4, British Library<sup>25</sup>



J.3. **Description:** Original scale: 1:2,500; orientation: unchanged (north). The Ordnance Survey County Series first edition plans are the first large scale maps to be produced of Kent, with the survey dating from 1872. The application way straddles the sheet boundary and the binding of the copies held in the British Library, and the copy presented here is therefore distorted by this context.

J.4. The plans show Cherrygarden Lane, Sandwich Road and the Cold Blow Corner road, so that the four limbs of these roads form a crossroads at Gooseberry Hall Corner (A). In common with the other roads, the application way is hand-painted in the colour of ochre (although the colouring may not be present on the short portion appearing on sheet

25 First edition in colour.

LXVII/16), signifying that the way was made up or metalled, and therefore of similar character to the other limbs of the crossroads.

J.5. The application way between A and B is braced into the neighbouring woodland parcel, and is not separately identified in the book of reference for Nonington.

J.6. **Conclusion:** The Ordnance Survey County Series first edition maps show that the application way was a made road between A and B, intended to sustain wheeled traffic. However, the application way is shown more narrowly than the neighbouring roads and braced into the parcel comprising surrounding woodland. This suggests that this limb of the road network was regarded as less important, and perhaps less well-defined and maintained, than the other limbs, and that most traffic using the Cold Blow Corner road would have turned into or from the Sandwich road in the direction of Nonington.

J.7. **Points:** 0

## K. Finance (1909–1910) Act 1910

K.1. **Date:** 1911

K.2. **Source:** National Archives<sup>26</sup>

<sup>26</sup> IR 124/5/57 and 124/5/59 (Ordnance Survey map sheets XLVII/8 and 12) and IR 58/17323



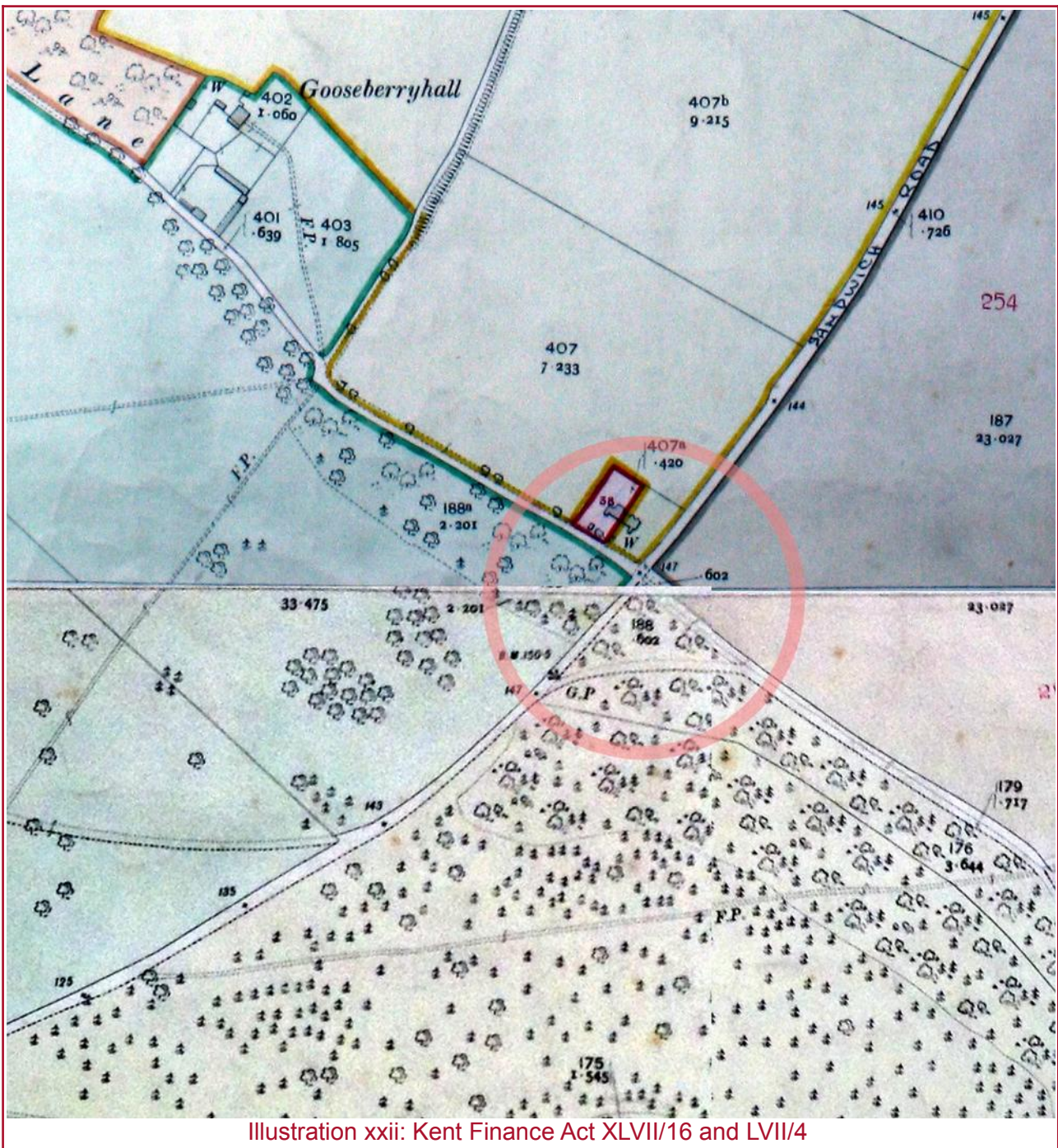


Illustration xxii: Kent Finance Act XLVII/16 and LVII/4

K.3. **Description:** original scale: 1:2,500; orientation: unchanged. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’, and discounts could be requested for land crossed by footpaths or bridleways. This is because s.35 of the 1910 Act provided,

"No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority."

K.4. A highway authority was a rating authority.

K.5. All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and s.94 provided:

"If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour."

K.6. The application way falls across two Ordnance Survey County Series sheets for Kent, LXVII/16 and LVII/4. On sheet LXVII/16, the application way is briefly shown to the southeast of Gooseberry Hall Corner, and is uncoloured (in common with Sandwich Road and Cherrygarden Lane). The boundary of hereditament 254 on the north side of the application way (and to the east of Sandwich Road) is clearly identified in grey.

K.7. On sheet LVII/4, individual hereditaments are distinguished only by the use of different colour washes, and boundaries are not individually identified. Colour and paper fade, and possibly careless completion of the map, makes it difficult to distinguish colour wash from uncoloured roads where yellow was used for the colour wash. This is a particular problem in the vicinity of Gooseberry Hall Corner, where the Sandwich Road, the road to Cold Blow Corner, and the application way, are not clearly distinguished from the colour wash used for hereditament 29 comprising the woodland and parkland of St Alban's Downs to the south.



K.8. However, if the relevant part of the map is enlarged and the contrast accentuated (see Illustration xxiii), it appears that both the Sandwich Road and the application way (and the continuation of the application way towards Cold Blow corner) are not colour washed, but the wash may include (whether by intention or error) the spur connecting these two roads.

K.9. **Conclusion:** The application way is uncoloured on sheet XLVII/16, and it appears that the way continues uncoloured onto sheet LVII/4. The Finance Act map is therefore good evidence that the application way was regarded as a public highway not subject to assessment.

K.10. As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, the burden rests on an objector to support any suggestion that a different exemption might account for the non-valuation of this white road.

K.11. **Points:** 5